

ORIGINAL

1

2 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

3 -----X

4 JOSEPH CRACCO,

5 PLAINTIFF,

6

-against-

Case No:

7 1:14-CV-08235-PAC

8

9 THE CITY OF NEW YORK, Police Officer  
10 JONATHAN CORREA, Shield 7869, Transit  
Division District 4, and Police Officer  
JOHN DOE (a fictitious name),

11 DEFENDANTS.

12 -----X

13

DATE: May 11, 2016

14

TIME: 11:15 A.M.

15

16 DEPOSITION of the Plaintiff,  
17 JOSEPH MATTHEW CRACCO, s/h/a JOSEPH CRACCO,  
18 taken by the Defendants, pursuant to a  
19 Notice and to the Federal Rules of Civil  
20 Procedure, held at the offices of the New  
21 York County, District Attorney's Office,  
22 Special Litigation Bureau, 80 Centre  
23 Street, New York, New York 10013, before  
24 Deborah Garzaniti, a Notary Public of the  
25 State of New York.

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2 A P P E A R A N C E S:

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4 JAMES M. MALONEY, ESQ.  
5 Attorney for the Plaintiff  
33 Bayview Avenue  
Port Washington, New York 11050  
6 BY: JAMES M. MALONEY, ESQ.

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9 NEW YORK COUNTY  
DISTRICT ATTORNEY'S OFFICE  
SPECIAL LITIGATION BUREAU  
10 Attorneys for the Defendants  
80 Centre Street  
11 New York, New York 10013  
BY: ELIZABETH N. KRASNOW, ESQ.  
12 - and -  
13 PATRICIA J. BAILEY, ESQ.

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## 2 F E D E R A L S T I P U L A T I O N S

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5 IT IS HEREBY STIPULATED AND AGREED by and  
6 between the counsel for the respective  
7 parties herein that the sealing, filing and  
8 certification of the within deposition be  
9 waived; that the original of the deposition  
10 may be signed and sworn to by the witness  
11 before anyone authorized to administer an  
12 oath, with the same effect as if signed  
13 before a Judge of the Court; that an  
14 unsigned copy of the deposition may be used  
15 with the same force and effect as if signed  
16 by the witness, 30 days after service of  
17 the original & 1 copy of same upon counsel  
18 for the witness.

19

20 IT IS FURTHER STIPULATED AND AGREED that  
21 all objections except as to form, are  
22 reserved to the time of trial.

23

24 \* \* \* \*

25

1 J. CRACCO  
2 J O S E P H M A T T H E W C R A C C O ,  
3 called as a witness, having been first duly  
4 sworn by a Notary Public of the State of  
5 New York, was examined and testified as  
6 follows:

## EXAMINATION BY

8 MS. KRASNOW:

9                   Q.     Please state your name for the  
10          record.

11 A. Joseph Matthew Cracco.

12 Q. What is your address?

13 A. 514 West 213th Street,

14 apartment 5E, New York, New York 10034.

15 Q. Good morning. My name is  
16 Elizabeth Krasnow. We met off the record.  
17 I am an Assistant District Attorney here at  
18 the New York County District Attorney's  
19 office. We are here today for your  
20 deposition in the matter of Cracco versus  
21 the City of New York which is currently  
22 pending in the Southern District of New  
23 York. I am the attorney for District  
24 Attorney Cyrus Vance.

## 25 The purpose of today's

1 J. CRACCO

2 gravity knife; correct?

3 A. Yes.

4 Q. Did Officer Correa do anything  
5 else wrong in your estimation?

6 A. I think that the multiple  
7 attempts were unfair or inaccurate I  
8 suppose, maybe.

9 Q. So you are referring to the  
10 fact that it took Officer Correa multiple  
11 attempts to open your knife; correct?

12 A. Yes.

13 Q. And in your mind, that rendered  
14 your arrest inaccurate; correct?

15 A. Yes.

16 Q. Why?

17 A. Because that isn't the way that  
18 the knife typically operates. He was using  
19 it in a manner that is not normal.

20 Q. How did the knife typically  
21 operate?

22 A. There is a small circular hole  
23 for the thumb to pivot it open.

24 Q. The hole that you are referring  
25 to is on the blade of the knife?

1 J. CRACCO

2 A. Correct.

3 Q. So when you would hold the  
4 knife in your hand, you would use your  
5 thumb and insert it into the hole to pivot  
6 the blade open; correct?

7 A. Correct.

8 Q. And in your estimation, that's  
9 the way the knife was intended to function;  
10 correct?

11 MR. MALONEY: Objection to the  
12 form, only because function is  
13 farther than open.

14 MS. KRASNOW: I am leaving the  
15 question as it is.

16 You can read it back.

17 (Whereupon, the referred to  
18 question was read back by the  
19 Reporter.)

20 MR. MALONEY: You can answer.

21 A. Yes, intended to be opened.

22 Q. Other than what we have already  
23 discussed, is there anything else that  
24 Officer Correa did wrong in your view?

25 MR. MALONEY: Can we clarify

1 J. CRACCO

2 of 2013?

3 A. Old Greenwich, Connecticut.

4 Q. For how long did you live in  
5 Old Greenwich?

6 A. Six months.

7 Q. So if September is the ninth  
8 month --

9 A. My math is probably wrong. I  
10 am very sorry.

11 Q. That's okay.

12 A. It was a rough transitional  
13 period.

14 Q. That would be about March of  
15 2014; correct?

16 A. No. I am sorry. I believe I  
17 moved out of Connecticut in December.

18 Q. December of 2013?

19 A. Yes.

20 Q. So you were in Old Greenwich  
21 for approximately three months then?

22 A. Maybe it was four months and  
23 then the move away from Brooklyn date was  
24 August. I do not recall a specific time, I  
25 apologize.

1 J. CRACCO

2 Q. That's all right.

3 Did you live with anyone in Old  
4 Greenwich?

5 A. Yes.

6 Q. Who did you live with?

7 A. Jared, J-A-R-E-D, Sippel,  
8 S-I-P-P-E-L.

9 Q. Mr. Sippel was present with you  
10 at the time of your arrest; correct?

11 A. Correct.

12 Q. The two of you were co-workers?

13 A. And roommates.

14 Q. The residence in Old Greenwich,  
15 was that a house or an apartment?

16 A. Condo.

17 Q. Did Mr. Sippel own or lease the  
18 apartment?

19 A. No.

20 Q. Do you know who did?

21 A. Dan Kilmurray,  
22 K-I-L-M-U-R-R-A-Y.

23 Q. Did he live there as well?

24 A. No, he did not.

25 Q. How did it come to be that you

1 J. CRACCO

2 and Mr. Sippel moved into the condo?

3 A. Mr. Sippel's girlfriend is the  
4 daughter of Dan Kilmurray. Her name is  
5 Lindsey. They had an empty space from the  
6 grandmother going into a retirement home.

7 Q. Did Lindsey live there with you  
8 and Jared?

9 A. Briefly, yes.

10 Q. How did you first meet Mr.  
11 Sippel?

12 A. We cooked together in San  
13 Francisco.

14 Q. When?

15 A. In 2010.

16 Q. At a restaurant?

17 A. Yes.

18 Q. What was the name of the  
19 restaurant?

20 A. Quince, Q-U-I-N-C-E.

21 Q. For how long did you work  
22 together at Quince?

23 A. A year, maybe longer.

24 Q. Would you describe Mr. Sippel  
25 as a friend of yours?

1 J. CRACCO

2 A. Yes.

3 Q. Going back to your residences  
4 then, where did you move after you left the  
5 apartment with Mr. Sippel in Old Greenwich?

6           A.     Manhattan, 207th Street. I am  
7     trying to remember. I am forgetting the  
8     address right now. I am sorry.

9 Q. Why did you leave the condo in  
10 Old Greenwich?

## A. To work in Manhattan.

12            0        Weren't you working in

13 Manhattan when you lived in Old Greenwich?

14 A Yes.

15 Q. Why did you leave the condo in  
16 Old Greenwich?

17 A. To be closer to it.

18 Q. Where were you working at the  
19 time?

30 A : At the time of the arrest?

31 0 Yes

23 A Brooklyn Fare. F-A-R-E.

22 Q Where is that located?

1 J. CRACCO

2 Manhattan on West 27th.

3 Q. Were you still working at  
4 Brooklyn Fare when you moved to 207th  
5 Street?

6 A. No.

7 Q. When did you stop working at  
8 Brooklyn Fare?

9 A. November of 2013.

10 Q. Why did you stop working there?

11 A. I was let go.

12 Q. Why were you let go, was a  
13 reason given to you?

14 A. They weren't ready for the  
15 opening. It still hasn't opened.

16 Q. What was the name of the place  
17 where you worked after Brooklyn Fare?

18 A. Marea, M-A-R-E-A.

19 Q. When did you start working at  
20 Marea?

21 A. December possibly.

22 Q. For how long did you live at  
23 207th Street?

24 A. One year. Just over one year,  
25 14 months.

1 J. CRACCO

2 Q. I am going to direct your  
3 attention to October 18, 2013, which is the  
4 date of your arrest. Do you recall what  
5 day of the week October 18, 2013 fell on?

6 A. I do not.

7 Q. Do you recall if it was a  
8 weekday or a weekend?

9 A. Probably a weekday.

10 Q. Why do you say that?

11 A. I don't know. I just think it  
12 was a weekday. I do not recall  
13 100 percent.

14 Q. As of that date, how old were  
15 you?

16 A. 27.

17 Q. As of that date, where did you  
18 live?

19 A. Old Greenwich, Connecticut.

20 Q. At the time you lived with Mr.  
21 Sippel; correct?

22 A. Correct.

23 Q. Have you ever lived with Mr.  
24 Sippel before, other than that period of a  
25 few months in Old Greenwich?

1 J. CRACCO

2 A. The two months in Brooklyn or  
3 the brief time in Brooklyn when I first  
4 moved to New York. I said I was staying at  
5 a place in Brooklyn.

6 Q. Mr. Sippel was staying there as  
7 well?

8 A. Yes.

9 Q. On any other occasions did you  
10 live with Mr. Sippel?

11 A. No.

12 Q. As of October 18, 2013, you  
13 were employed by Brooklyn Fare; correct?

14 A. Correct.

15 Q. Did you work out of both  
16 locations?

17 A. Yes.

18 Q. On October 18, 2013, were you  
19 working in the Manhattan location?

20 A. Yes.

21 Q. Was the restaurant opened for  
22 business at the time?

23 A. No.

24 Q. Was it in the process of  
25 opening for business?

1 J. CRACCO

2 A. Yes.

3 Q. When did you start working  
4 there?

5                   A.     Approximately July.

6 Q. July of 2013?

7 A. Yes.

8 Q. What was your job title, if you  
9 had one?

10                   A.     I was sous chef of the  
11         Manhattan location of Brooklyn Fare and  
12         just to clarify, Brooklyn Fare is a  
13         restaurant and grocery store. The  
14         restaurant is not opened, but the grocery  
15         store is, so there are multiple.

16 Q. So at the time you were working  
17 there in October of 2013, the grocery store  
18 was opened?

19                   A.       I can't remember exactly. I  
20       think it might have been. I am not sure.

21 O. But you can't be sure?

22                   A.     I am not sure. As far as  
23 dates, I am not for sure.

24 Q. Now the restaurant part of  
25 Brooklyn Fare never opened in the Manhattan

1                           J. CRACCO

2     location; correct?

3     A.     Correct.

4     Q.     But as of October of 2013, it  
5     was in the process of attempting to open;  
6     right?

7     A.     Correct.

8     Q.     And the restaurant had a second  
9     component which was the grocery store;  
10    correct?

11    A.     Correct.

12    Q.     You can't be sure if the  
13    grocery store was opened in October of  
14    2013?

15    A.     Correct.

16    Q.     But eventually it did open?

17    A.     Yes.

18    Q.     Is it open today?

19    A.     Yes.

20    Q.     What were your responsibilities  
21    as sous chef?

22    A.     Because the restaurant wasn't  
23    opened yet, I was responsible for setting  
24    up the prep kitchen for the grocery store.  
25    So that meant unpacking large pieces of

7 Q. So the grocery store itself had  
8 a kitchen?

9 A. Yes.

10 Q. Because when it opened, it  
11 would sell prepackaged food, that was the  
12 idea?

13 A. Correct.

14 Q. And as the sous chef, did you  
15 actually cook in this prep kitchen or were  
16 you setting up to open as you described?

17 A. All of the above.

18 Q. Can you please take me through  
19 what you did on the morning of October 18,  
20 2013, starting with when you first woke up?

31 A I don't recall.

22 Q. You were living in Old  
23 Greenwich at the time; right?

24                   A.       Yes, we had to -- we commuted  
25                   on the Metro North, like 7 o'clock trains.

1                           J. CRACCO

2                           Q.      7:00 a.m.?

3                           A.      Yes, maybe it was 6:00 because  
4      we had to be there by 7:00. I don't know,  
5      but it was early. Probably got to work --

6                           Q.      Did you go with Mr. Sippel?

7                           A.      Yes.

8                           Q.      You took the train from Old  
9      Greenwich to Grand Central Station;  
10     correct?

11                          A.      Correct, and then the shuttle  
12     to the west side and then worked. On our  
13     way home from work --

14                          Q.      Before we get to when you were  
15     leaving work, could you tell me what you  
16     did at work that day?

17                          A.      I don't recall specifics.

18                          Q.      Do you recall anything that you  
19     did at work that day?

20                          A.      Not specifically.

21                          Q.      Who else was with you at work  
22     that day?

23                          A.      There were half a dozen  
24     employees in the kitchen at that time, plus  
25     multiple deli, grocery store employees.

1 J. CRACCO

2 Q. What were the employees in the  
3 kitchen doing?

4 A. I don't recall.

5 Q. What were the employees in the  
6 deli doing?

7 A. I do not recall.

8 Q. When you say "half a dozen," is  
9 that total between the kitchen and the  
10 deli?

11 A. No. In total at the restaurant  
12 there were probably or in the building at  
13 that time there were 12 employees, possibly  
14 more. I do not recall specifics.

15 Q. Again, you can't recall if the  
16 grocery store was opened as of that date?

17 A. I don't remember.

18 Q. Is there anything at all that  
19 you can recall doing at work that day?

20 A. Unpacking boxes, yes, because I  
21 remember I had glue residue from like the  
22 clear packing tape from the boxes on my  
23 knife. I even pointed that out to the  
24 officer.

25 Q. What type of boxes were you

1 J. CRACCO

2 unpacking?

3 A. I don't remember what it was.

4 It was a lot of them.

5 Q. Large boxes, small boxes?

6 A. Large boxes.

7 Q. What was in the boxes?

8 A. I don't recall. It could have  
9 been shelving. It could have been a lot of  
10 things. I don't recall specifically.

11 There was a lot that day.

12 Q. Can you describe for me how you  
13 unpacked the boxes?

14 A. I used my knife to cut the  
15 packing tape, packing straps, because we  
16 were receiving a lot of pallets of  
17 inventory and they always have large  
18 packing straps and they are wrapped in  
19 bubble wrap or sticky tape, clear-sided  
20 tape, and then breaking down the cardboard  
21 and putting the inventory away.

22 Q. And that's the same knife that  
23 you had on your person when you were  
24 arrested; correct?

25 A. Yes.

1 J. CRACCO

2 Q. That's the knife that Officer  
3 Correa determined to be a gravity knife;  
4 correct?

5 A. Correct.

6 Q. Did there come a time when you  
7 left work?

8 A. Yes.

9 Q. What time was that?

10 A. Shortly before I was arrested.

11 Q. Do you remember approximately  
12 what time?

13 A. I do not.

14 Q. How long of a day would you  
15 normally work around that time period in  
16 October of 2013?

17 A. 12 hours.

18 Q. You mentioned earlier that you  
19 had to be at work by 7:00 a.m.?

20 A. Yes.

21 Q. Would it be fair to say then  
22 that you left work at approximately  
23 7:00 p.m.?

24 A. Possibly. I might have left  
25 early that day. I do not recall.

1 J. CRACCO

2 Q. When you left work, what did  
3 you have with you?

4 MR. MALONEY: Objection to the  
5 form. You can answer.

6 A. My backpack, clothes, shoes.

7 Q. Did you have your knife?

8 A. Yes.

9 Q. You mentioned that you had a  
10 backpack?

11 A. Yes, or this backpack actually,  
12 a little side satchel.

13 Q. The same bag that you brought  
14 to the deposition today?

15 A. Yes.

16 Q. For the record, I am looking at  
17 it right now. It is a brown and black  
18 messenger bag that looks to fit, what would  
19 you say, three gallons maybe?

20 A. Sure.

21 Q. You mentioned that you had the  
22 knife as well when you left work?

23 A. Yes.

24 Q. Where was the knife?

25 A. In my right pants pocket.

1 J. CRACCO

2 Q. Front or back?

3 A. Front.

4 Q. Was it clipped to your pocket?

5 A. Yes.

6 Q. So the clip was visible?

7 A. Yes.

8 Q. If somebody were to look at  
9 you?

10 A. Yes.

11 Q. Was anyone with you when you  
12 left work?

13 A. Jared Sippel.

14 Q. Anyone else?

15 A. No.

16 Q. Why did you have the knife  
17 clipped to your pants?

18 A. That is where I always kept it.

19 Q. Is that where you kept it when  
20 you were at work?

21 A. Yes.

22 Q. Why did you keep it clipped to  
23 your pants when you were at work?

24 A. That's where I always kept it.

25 Q. Is it because it was easily

1 J. CRACCO

2 accessible to you when it was clipped to  
3 your pants?

4 A. Yes.

5 Q. When you left work, why didn't  
6 you put the knife in your backpack?

7 A. Because I always kept it in my  
8 pocket.

9 Q. Did you think that you would  
10 need to use the knife on the subway?

11 A. No.

12 Q. Is there any reason, other than  
13 the fact that that's where you always kept  
14 it, why you left the knife clipped to your  
15 pants when you left work?

16 A. No.

17 Q. So where did you go after you  
18 left work?

19 A. The S Train. I transferred off  
20 47th Street to Grand Central to take the  
21 Metro home.

22 Q. Did there come a time when you  
23 were arrested?

24 A. Yes.

25 Q. What led up to your arrest?

1 J. CRACCO

2 Let's start earlier. Were you arrested in  
3 the station where you took the S Train or  
4 did that happen when you got to 42nd  
5 Street?

6 A. When we got to 42nd Street, it  
7 was coming off the platform, I had just  
8 started to take the stairs up to Grand  
9 Central and Officer Correa stopped me.

10 Q. So you were coming off the  
11 platform from the S Train?

12 A. Correct.

13 Q. Where were you when you first  
14 saw Officer Correa?

15 A. On the platform.

16 Q. So you first saw him on the  
17 platform, but then he actually stopped you  
18 as you were on the stairs? I am just  
19 trying to understand how this happened.

20 A. Yes.

21 Q. What was he doing when you  
22 first saw him on the platform?

23 A. Standing there.

24 Q. Did he say anything to you?

25 A. Hey you or something along

1 J. CRACCO

2 those lines.

3 Q. Did he ask you to stop?

4 A. Yes, yes.

5 Q. Where were you when he asked  
6 you to stop?

7 A. On the stairs.

8 Q. On the stairs going up into  
9 Grand Central?

10 A. Correct.

11 Q. Did he say anything to you at  
12 that point?

13 A. Yes.

14 Q. What did he say?

15 A. I don't recall specifics. Hey,  
16 come here, and then he asked if that was a  
17 knife. I said -- I think that is what he  
18 said, something along those lines. He  
19 referenced my pocket knife and I gave it to  
20 him.

21 Q. Did he ask for it or did you  
22 just give it to him?

23 A. I am pretty sure he asked for  
24 it.

25 Q. Did you hand it to him?

1 J. CRACCO

2 A. I am pretty sure, yes. I am  
3 pretty sure I handed it to him.

4 Q. Where was Mr. Sippel at this  
5 point?

6 A. Like more up the steps.

7 Q. Where were you in relation to  
8 Mr. Sippel?

9 A. The bottom of the steps.

10 Q. Was the subway crowded at that  
11 time?

12 A. No.

13 Q. Were the stairs crowded at that  
14 time?

15 A. No.

16 Q. Was it rush hour?

17 A. I don't think so.

18 Q. How many steps above you was  
19 Mr. Sippel?

20 A. I don't know specifically.

21 Q. What happened after you gave  
22 Officer Correa the knife?

23 A. He attempted to open it with a  
24 whipping motion and --

25 MS. KRASNOW: For the record,

J. CRACCO

2                   the Witness flicked his wrist when he  
3                   testified about the whipping motion.

4 Q. Is that a fair  
5 characterization?

6                   A.       That is, yes, of course. And  
7   then -- I am sorry. Where were you?

8 MS. KRASNOW: Can you read back  
9 my last question.

13 Q. The whipping motion that you  
14 described where you demonstrated by  
15 flicking your wrist, did Officer Correa do  
16 the wrist flick away from his body?

17                   A.       Yes. I mean you couldn't flick  
18       it towards you, but.

19 Q. What happened after Officer  
20 Correa flicked his wrist while holding the  
21 knife?

22 THE WITNESS: Read it back to  
23 me. I apologize.

24 (Whereupon, the referred to  
25 question was read back by the

1 J. CRACCO

2 Reporter.)

3 A. It didn't open. It didn't  
4 open. On the fifth try it opened and he  
5 said, oh, it is a gravity knife. No, it is  
6 not. It took you five tries. Oh, it  
7 doesn't matter. And then he searched me.  
8 He handcuffed me, then searched me, then  
9 took me to jail. Not to jail. I had to go  
10 to some other train platform where I stood  
11 waiting handcuffed for a while and then we  
12 went above ground and some other cops  
13 picked us up and then we drove to a  
14 different station, central booking, I  
15 presume.

16 Q. When you say that it took him  
17 five tries to open the knife, do you mean  
18 that it took him five flicks of his wrist  
19 to open the knife?

20 A. Yes.

21 Q. Did the knife open on the fifth  
22 time that Officer Correa flicked his wrist?

23 A. Yes.

24 Q. Did the blade lock into place?

25 A. I don't remember.

1                                 J. CRACCO

2                 Q.      Have you ever attempted to open  
3                                 your knife in that manner?

4                 A.      No.

5                 Q.      Where was Mr. Sippel when  
6                                 Officer Correa was attempting to open the  
7                                 knife?

8                 A.      I don't know because I was  
9                                 facing the officer.

10                Q.      Was Mr. Sippel behind you then?

11                A.      Yes.

12                Q.      So you couldn't see him?

13                A.      Correct.

14                Q.      At any point during your  
15                                 encounter with Officer Correa, did Mr.  
16                                 Sippel say anything to the officer?

17                A.      Yes.

18                Q.      What did he say?

19                A.      I don't recall. I know they  
20                                 spoke briefly.

21                Q.      Do you recall anything about  
22                                 the substance of what was said between  
23                                 them?

24                A.      I don't.

25                Q.      Were there any --

1 J. CRACCO

2 A. Oh, yes. He explained to him  
3 he was my boss and we were working.

4 Q. Did Mr. Sippel say anything  
5 else to Officer Correa?

6 A. I don't recall.

7 Q. Do you recall if Officer Correa  
8 said anything to Mr. Sippel?

9 A. Yes, but I don't recall what.

10 Q. Besides Officer Correa, were  
11 there any other officers present at the  
12 scene of your arrest?

13 A. No.

14 Q. You mentioned that Officer  
15 Correa searched you. Did that search take  
16 place on the subway platform?

17 A. Yes.

18 Q. What did the search consist of?

19 A. Searching my backpack and  
20 patting me down.

21 Q. Anything else?

22 A. No.

23 Q. At some point you mentioned  
24 that you were taken to the station, is that  
25 the word that you used?

J. CRACCO

2 A. Yes.

3            Q.     The police station you mean?

4 A. Yes.

5 0. Also known as a precinct?

6 A. Sure.

7 Q. What happened when you got to  
8 the precinct?

9           A.     I was put in a holding cell. I  
10        did processing paperwork, then I was put in  
11        a holding cell.

12 Q. For how long were you at the  
13 precinct?

14                   A.     Between three and five hours.  
15     I do not recall. I didn't have a watch on

17 Q. Did Officer Correa ask you for  
18 your address at any point?

18 A T am sure he did.

Q. what address did you give him?

21 Connecticut Old Greenwich.

22 Q Are you sure about that?

23                  A                  Yes

24 Q Were you given a desk

25 appearance ticket?

1 J. CRACCO

2 A. Yes, I think so.

3 Q. At some point you were released  
4 from the precinct; right?

5 A. Yes.

6 Q. You didn't go directly to  
7 court; correct?

8 A. Correct.

9 Q. Before you left the precinct,  
10 were you given a piece of paper to explain  
11 to you when you had to appear in court?

12 A. Yes.

13 Q. Who gave you that piece of  
14 paper, did Officer Correa give it to you?

15 A. At the time of my release, he  
16 gave me some paperwork. I am not sure if  
17 other people gave me paperwork as well. I  
18 am sorry.

19 Q. It's okay.

20 MS. KRASNOW: Can you mark this  
21 as Exhibit A, please.

22 (Whereupon, the aforementioned  
23 document was marked as Defendant's  
24 Exhibit A for identification as of  
25 this date by the Reporter.)

1 J. CRACCO

2 still opened today; right?

3 A. Correct.

4 Q. Is it open under the same name?

5 A. Yes.

6 Q. So if I looked it up, I would  
7 expect to see that the address is 431 West  
8 37th Street?

9 A. I believe so.

10 Q. I don't have anymore questions  
11 about that exhibit.

12 The knife that you were  
13 arrested with, what type of knife was it,

14 A. Spyderco. S-P-Y-D-E-R-C-O. I  
15 could be wrong. It's an approximation.

16 Q. Was it a folding knife?

17 A. Yes.

18 Q. When did you buy it?

19 A. A long time ago. I do not  
20 recall when. I had that same knife since I  
21 was a child, but I lost it once and I  
22 bought the same knife again. So in total  
23 that make and model, ten years, that would  
24 be a fair.

25 Q. Would it be fair to say that

1 J. CRACCO

2 the particular knife that you had on the  
3 date of your arrest you had owned for at  
4 least several years prior to your arrest?

5 A. Yes.

6 Q. Where did you buy that knife?

7 A. I do not recall.

## 8 Q. In California?

9 A. I don't remember.

10 Q. What did you use it for,  
11 generally speaking?

12                   A.     Opening boxes. I worked as a  
13        chef in California as well. Again, opening  
14        boxes, opening packaging. You can use it  
15        to open a beer bottle.

16 O. How?

17               A.     Sideways, just kind of  
18     (indicating): Like people use a lighter to  
19     use it for leverage.

20 O. You use the blade of the knife?

21               A.     Unopened, the side of the blade  
22     to be used to open a beer bottle as well.

23                   Q.     Or you can use a beer bottle  
24       opener also?

25 A. If you had one at the time.

1 J. CRACCO

2 Q. Did you ever use your knife  
3 other than in connection with your work or  
4 to open a beer bottle?

5 A. Yes.

6 Q. How?

7 A. Cutting things.

8 Q. What types of things?

9 A. I worked on cars a lot, so, you  
10 know, tubing for engines or cleaning out  
11 under my fingernails. Multiple uses. It  
12 was the first tool invented by man, the  
13 knife.

14 Q. When you say you worked on  
15 cars, was that a hobby?

16 A. Yes.

17 Q. Or was that employment?

18 A. Hobby.

19 Q. Before your arrest in October  
20 of 2013, had you ever carried the knife in  
21 New York City through the subway?

22 A. Yes.

23 Q. On how many occasions?

24 A. Multiple.

25 Q. Did you regularly carry it

1 J. CRACCO

2 through the subway?

3 A. Yes.

4 Q. Did you carry the knife around  
5 with you often?

6 A. Yes.

7 Q. Is it fair to say that you  
8 almost always had it on your person?

9 A. Yes.

10 Q. Would you regularly wear it  
11 clipped to your pants in the manner that  
12 you wore it on the date of your arrest?

13 A. Yes.

14 Q. You mentioned that on the date,  
15 the specific date of your arrest, you used  
16 the knife at work to open boxes; is that  
17 correct?

18 A. Yes.

19 Q. Could you have used any other  
20 type of knife to open boxes?

21 A. Yes.

22 Q. Could you have used a straight  
23 edge knife?

24                   A.       There were, as I was saying,  
25       many pallets with packing straps where a

1 J. CRACCO

2       serrated blade is more efficient. It cuts  
3       more easily.

4 Q. Well, you were working in a  
5 kitchen; correct?

6 A. Yes.

7 Q. Were there knives with serrated  
8 blades in the kitchen?

9                   A.       Yes, but they were for food  
10          use. Not for non-food items.

11                   Q.     Would it be possible to  
12     designate one of those knives for non-food  
13     items?

14 A. Yes.

15 Q. Could you also have used a pair  
16 of scissors to open the boxes?

17               A.     If I had a pair of scissors on  
18       me, yes.

19 Q. Could you have left your knife  
20 at work at the end of the day?

21 A. I could have.

22 Q. Around that time period, were  
23 you using your knife, other than at work?

34 A Yes

35 0 For what?

J. CRACCO

2           A.       The same uses that I would  
3       normally use it for, cutting things,  
4       opening beer bottles, cleaning fingernails.

5 Q. Around that time period were  
6 you working on cars?

7 A. On motorcycles.

8 Q. Did you own a motorcycle?

9 A. I do.

10 Q. Did you have it in Old  
11 Greenwich?

12 A. I did.

13 Q. Did you use the knife to work  
14 on the motorcycle?

15 A. If needed.

16 Q. Do you recall using the knife  
17 to work on the motorcycle in and around  
18 October of 2013?

A. Not specifically.

20 Q. I think earlier we spoke about  
21 how you would open your knife by using your  
22 thumb, placing your thumb inside of a hole  
23 on the blade and maneuvering the blade.  
24 open; correct?

25 A. Yes.

1 J. CRACCO

2 while holding the knife after several  
3 attempts, thereby relieving the blade which  
4 locked in place. It did not require manual  
5 locking.

6 Q. So in order to reflect what  
7 really happened in your estimation, Exhibit  
8 B would have to be amended to reflect the  
9 fact that it took Officer Correa several  
10 attempts to open the knife; correct?

11                   A.       And it is also his  
12 interpretation of what a gravity knife is.

13           Q.     In your estimation then, is  
14     this document, the document signed by  
15     Officer Correa, misleading in the fact that  
16     it omits the fact that it took him multiple  
17     attempts to open the knife?

18 A. Yes.

19 Q. So a person reading this  
20 document would assume that he was able to  
21 open the knife with the first flick of his  
22 wrist; correct?

23 A. Correct.

24 Q. Do you see on Exhibit B right  
25 underneath the charge it says on or about

1 J. CRACCO

2 October 18, 2013 at 4:17 p.m. in the subway  
3 station?

4 A. Yes.

5 Q. Does that refresh your  
6 recollection as to the time of your arrest?

7 A. Sure, yes.

8 Q. So you have no reason to think  
9 that that time is not accurate?

10 A. Not to my knowledge.

11 Q. Are you aware that in  
12 connection with the underlying criminal  
13 matter, your attorney raised a  
14 constitutional challenge to the gravity  
15 knife statute?

16 A. Yes.

17 Q. How do you know that?

18 A. We discussed that.

19 Q. I don't want you to talk to me  
20 about what you discussed with your  
21 attorney, but you mentioned earlier that  
22 you reviewed the papers that were filed in  
23 your defense in the underlying criminal  
24 matter; correct?

25 A. Yes.

J. CRACCO

2 Q. Had you ever opened your knife  
3 with one hand in any other manner than the  
4 one that I just described?

5 A. No.

6 Q. The District Attorney's office  
7 filed charges against you as a result of  
8 your arrest; correct? x

9 A. I believe so.

10 Q. Do you know what the charges  
11 were?

A. Possession of a gravity knife.

13 Q. Have you ever seen a copy of  
14 the criminal court complaint that was filed  
15 against you in connection with your arrest?

16 A. Possibly.

17 MS. KRASNOW: Can you mark this  
18 as Exhibit B.

19 (Whereupon, the aforementioned  
20 document was marked as Defendant's  
21 Exhibit B for identification as of  
22 this date by the Reporter.)

23 Q. Mr. Cracco, I am showing you  
24 what has been marked as Defendant's Exhibit  
25 B for the purposes of this deposition.

1 J. CRACCO

2 Take a moment to review the document and  
3 let me know when you are done.

4 A. Okay.

5 Q. Have you had an opportunity to  
6 review the document?

7 A. Yes.

8 Q. Have you seen that document  
9 before today?

10 A. Yes.

11 Q. When did you see it?

12 A. After my arrest, I believe.

13 Q. Do you see that the document is  
14 signed by Officer Correa?

15 A. Yes.

16 Q. Do you see that the document  
17 sets out alleged facts surrounding your  
18 arrest?

19 A. Yes.

20 Q. You've had a chance to look at  
21 those facts; right?

22 A. Yes.

23 Q. Are they accurate?

24 A. My name is misspelled.

25 Q. Let's start there. Where is

1 J. CRACCO

2 your name misspelled?

3 A. It is J-O-S-E-P-H.

4. In the caption?

5 A. Indeed.

6 Q. Let's circle back to the  
7 alleged facts that are set out in the  
8 documents surrounding your arrest.

9 A. Got it.

10 Q. Are those facts accurate?

11 A. I don't believe I -- I do not.

12 O. Well, let me read what I am

13 referring to when I say the facts, then I  
14 will ask the question again.

15 A. Sure.

16 Q. So in the lower portion of the  
17 document it says: "I know that the knife  
18 was a gravity knife because I opened the  
19 knife with centrifugal force by flicking my  
20 wrist while holding the knife, thereby  
21 releasing the blade which locked in place  
22 by means of an automatic device that did  
23 not require manual locking."

24 Do you see where those words  
25 are reflected in the document?

1 J. CRACCO

2 A. Yes.

3 Q. Is that factual narrative  
4 accurate?

5 MR. MALONEY: Objection to the  
6 form. It states what the officer  
7 knows.

8 MS. KRASNOW: I am leaving the  
9 question as is.

10 Q. You can answer it.

11 MR. MALONEY: You can answer.

12 A. That is the officer's  
13 interpretation of it, yes.

14 Q. But from your perspective, is  
15 it accurate, is it true?

16 A. I think that the way it is  
17 worded implies that it happened with one  
18 simple flick of the wrist, which is not the  
19 case.

20 Q. What could be changed in that  
21 portion that I just read to reflect the  
22 true version of events as you see them?

23 A. Officer Correa believes it was  
24 a gravity knife because the knife opened by  
25 centrifugal force by flicking my wrist

1 J. CRACCO

2                   A.       I don't know.   I don't know.   I  
3   am not a lawyer.

4 Q. What were the circumstances of  
5 the arrest involving the fireworks?

6           A.       I purchased fireworks in New  
7 Jersey on the 4th of July and lit them off  
8 in New York on the 5th of July.

9                   Q.     Why did you light them off?

10 A. To see them.

11 O. Did you light them under a car?

12 A. No.

13 Q. Where did you light them?

## 14 A. On the sidewalk.

15 0. Were there cars nearby?

16 A. Yes.

17 Q. Did one of the fireworks end up  
18 under a car?

A. I don't believe so.

20 Q. Did the fireworks, in fact, go  
21 off?

22 A. Yes.

Q. Can you be sure that none of  
the fireworks went off under a car?

25 A. Yes.

J. CRACCO

Q. How do you know that?

3                   A.       The next day I saw the remnants  
4                   of the firecrackers on the sidewalk in the  
5                   daytime, sunlight, like I saw them on the  
6                   sidewalk.

7 Q. Where did this take place, in  
8 New York County?

9                   A.     In front of my apartment at  
10                 207th Street.

11 Q. What time of night was it?

12                   A.     It was late, it was  
13     1:00 a.m.-ish.

14 Q. 1:00 a.m.?

15                   A.      Ish.   That's an approximation.  
16      I am not sure.

17 Q. Had you been drinking?

18 A. NO.

19 Q. Was this a weekend or a  
20 weekday, July 5th? Well, I guess to be  
21 clear, you said that you lit them at  
22 1:00 a.m. Is that 1:00 a.m. on the morning  
23 of July 5th or is that 1:00 a.m. on the  
24 morning of July 6th?

25 A. I don't recall. By that time

1 J. CRACCO

2 it might have been the 6th. I do not  
3 recall. I am sorry.

4 Q. Was that a weekday, if you  
5 know?

6 A. I do not recall.

7 Q. Were there a lot of people out  
8 at 1:00 a.m. when you lit the fireworks?

9 A. No.

10 Q. Did you see children in the  
11 vicinity?

12 A Yes.

13 Q. How close were the children to  
14 the fireworks when you lit them?

A Three-quarters of a city block.

16            0      Did you know the children?

17 Λ Ν

18 Q. Did you warn them that you were  
19 going to light fireworks?

20 λ No

21 Q. Was anyone with you when you  
22 lit the fireworks?

33                    A                    My girlfriend

24 Q. Why did you decide to light the  
25 fireworks?

1 J. CRACCO

2                   A.       To celebrate our country's  
3 independence.

4 Q. Did it occur to you that it may  
5 be dangerous to do so?

6 A. Yes.

7 O. But you did it anyway?

8 A. Yes.

9 Q. You mentioned that you lit them  
10 on the sidewalk; correct?

11 A. Yes.

12 Q. Were there cars parked along  
13 the sidewalk?

14 A. Yes.

15 Q. Were there cars parked along  
16 the portion of the sidewalk where you lit  
17 the fireworks?

18 A. Yes.

19 Q. What type of fireworks were  
20 these?

21 A. Firecracker.

22 O. How many did you light?

23 A. I don't recall.

24 Q. Why did you go to New Jersey to  
25 buy the fireworks?

1 J. CRACCO

2 taken.)

10 MS. KRASNOW: Yes.

11 Q. Mr. Cracco, I just have a few  
12 follow-up questions.

13 A. Okay.

14 Q. Going back to your arrest, when  
15 Officer Correa was handling your knife, you  
16 testified that he flicked his wrist while  
17 holding the knife; correct?

18 A. Yes.

19 Q. And that he flicked his wrist  
20 away from his body; correct?

21 A. Yes.

22 Q Was that in a downward motion?

23 A Yes

24 Q. All five attempts, were they  
25 the same flick of the wrist away from his

1 J. CRACCO

2 body in a downward motion?

3                   A.       They became more violent with  
4   each attempt.

5 Q. But the motion itself was the  
6 same, it was just that it was done with  
7 more aggression, would that be fair to say?

8 A. Yes.

9                   Q.     We spoke earlier about where  
10        you may have gotten the knife that you had  
11        on the date of your arrest?

12 A. Yes.

13 Q. At the time that you had the  
14 knife, you were living in California;  
15 correct?

16                   A.       No, that's not what I said. I  
17        said I was unaware of where I got that  
18        knife. I had that same model twice. I do  
19        not recall when and where I purchased that  
20        one.

21                   Q.     Could you narrow down the  
22 possible places where you may have bought  
23 it?

24                   A.     Iowa, California or Minnesota  
25     or Illinois. Sorry. I am being as

1 J. CRACCO

2 accurate as possible.

3 Q. You move around a lot.

4 A. I do. That very knife that got  
5 taken away from me has been to the  
6 Colosseum, to the Roman Colosseum and back.  
7 Not that that matters.

8 Q. So it went on a flight, so  
9 you --

10 A. It was checked.

11 Q. In your luggage?

12 A. Yes, many years ago.

13 Q. Why did you check it in your  
14 luggage as opposed to carrying it with you  
15 on the plane?

16 A. Because you can't have knives  
17 on planes. I also brought my cooking  
18 knife. I also cook professionally or I did  
19 cook professionally. Now I sell wine  
20 professionally.

21 Q. You mentioned also that at the  
22 time of your arrest there was residue on  
23 the knife from the tape that was on the  
24 packages that you were opening; is that  
25 correct?

1                           J. CRACCO

2                           A.     Yes.

3                           Q.     Where was the residue?

4                           A.     On the tip of the blade.

5                           Q.     Was the residue sticky?

6                           A.     Yes.

7                           Q.     So theoretically, it would make  
8     it more difficult to open the knife in  
9     flicking your wrist; correct?

10                          MR. MALONEY: Objection to the  
11     form. He has no expertise in this.  
12     Also we are talking about the tip of  
13     the blade, that is not --

14                          MS. KRASNOW: I am not asking  
15     for an expert opinion.

16                          Q.     You can answer the question as  
17     it was phrased.

18                          THE WITNESS: Can you reread  
19     the question.

20                          (Whereupon, the referred to  
21     question was read back by the  
22     Reporter.)

23                          A.     No comment.

24                          Q.     You have to answer the  
25     question. If you don't know, you don't

1 J. CRACCO

2 know.

3 A. I don't know.

4 Q. But you mentioned to the  
5 officer that there was a residue on the  
6 knife; right?

7 A. Explaining it was a work tool.

8 Q. So you don't know if the  
9 residue would have impacted the ability to  
10 open the knife?

11 A. I don't believe it would.

12 Q. Why not?

13 A. The shape of the handle and  
14 where the tip of the blade rests isn't  
15 particularly in contact with the handle and  
16 I don't think that the residue would cause  
17 any effect.

18 Q. Did you notice if there was  
19 residue anywhere else on the knife?

20 A. Not to my knowledge.

21 Q. Is that a no, there was no  
22 residue or I didn't observe whether there  
23 was residue elsewhere on the knife?

24 A. I did not see any residue  
25 elsewhere on the knife.